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Office Depot, Inc. and International Brotherhood of Teamsters, Local 705, AFL-CIO. Case 13-CA-38703-1

November 9, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Pursuant to a charge filed by the Union on July 20, 2000, and a first amended charge filed on August 15, 2000, the General Counsel of the National Labor Relations Board issued a complaint on August 23, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 13-RC-20283. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 15, 2000, the General Counsel filed a Motion for Summary Judgment. On September 18, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. Specifically, the Respondent renews its contention, raised and rejected in the representation case, that the petitioned-for and certified unit of full-time and regular part-time DSRs (Delivery Service Representatives), lead DSRs, and DSR Assistant helpers employed at its Carol Stream, Lansing, and Rockford, Illinois facilities is not an appropriate unit. Instead, the Respondent reiterates its argument that the only appropriate unit is a wall-to-wall unit of all warehouse, receiving, production, plant clerical, maintenance, and transportation employees employed at the three Illinois facilities mentioned above and its facilities in Milwaukee, Wisconsin, St. Louis, Missouri, and Indianapolis, Indiana.

All representation issues raised by the Respondent were or could have been litigated in the prior representa-

tion proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).¹

We also find there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent by letter of June 5, 2000:

1. A list of current bargaining unit employees, including their names, dates of hire, rates of pay, and job classifications.
2. A copy of all current company policies that concern or relate to wages, hours, and working conditions for bargaining unit employees.
3. A copy of all current job descriptions for bargaining unit employees.
4. A copy of all fringe benefit plans for bargaining unit employees (including the plan document and summary plan description), including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans that relate to the bargaining unit employees.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.² The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

¹ Members Liebman and Hurtgen did not participate in the underlying representation proceeding. They find, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case.

² See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in Carol Stream, Illinois, has been engaged in supplying office products nationwide. During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, sold and shipped from its Carol Stream, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois, and purchased and received at its Carol Stream, Illinois facility, goods valued at more than \$50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held May 5, 2000, the Union was certified on May 31, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time DSRs, lead DSRs, and DSR Assistant helpers located at the Employer's facility in Carol Stream, Illinois, and its Lansing and Rockford, Illinois transfer points, including the "stem DSRs" who begin and end their routes from Carol Stream, deliver products to the transfer points, and then continue with their assigned routes; but excluding office clerical employees, warehouse associates (including janitors), lead warehousemen, DSR Assistant loaders, reconciliation employees (plant clericals), customer service representatives, dispatchers, equipment operators, supervisors and guards as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about June 5, 2000, the Union has requested the Respondent to bargain and to furnish information, and, since about June 5, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after June 5, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested by it on about June 5, 2000.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Office Depot, Inc., Carol Stream, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, Local 705, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time DSRs, lead DSRs, and DSR Assistant helpers located at the Employer's facility in Carol Stream, Illinois, and its Lansing and Rockford, Illinois transfer points, including the "stem DSRs" who begin and end their routes from Carol Stream, deliver products to the transfer points, and then continue with their assigned routes; but excluding office clerical employees, warehouse associates (including janitors), lead warehousemen, DSR Assistant loaders, reconciliation employees (plant clericals), customer service representatives, dispatchers, equipment operators, supervisors and guards as defined in the Act.

(b) Furnish the Union the information requested by it on about June 5, 2000.

(c) Within 14 days after service by the Region, post at its facilities in Carol Stream, Lansing, and Rockford, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 5, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 9, 2000

John C. Truesdale,	Chairman
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, Local 705, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time DSRs, lead DSRs, and DSR Assistant helpers located at our facility in Carol Stream, Illinois, and our Lansing and Rockford, Illinois transfer points, including the "stem DSRs" who begin and end their routes from Carol Stream, deliver products to the transfer points, and then continue with their assigned routes; but excluding office clerical employees, warehouse associates (including janitors), lead warehousemen, DSR Assistant loaders, reconciliation employees (plant clericals), customer service representatives, dispatchers, equipment operators, supervisors and guards as defined in the Act.

WE WILL provide the Union with the information it requested on about June 5, 2000.

OFFICE DEPOT, INC.